

PN ABZ-326 P.O. #2
91923

**An Assessment of the
Office of the Public Defender
in El Salvador**

Final Report

Presented to:

**United States of America
A.I.D. Mission to El Salvador
San Salvador, El Salvador**

Prepared by:

**National Center for State Courts
1110 No. Glebe Road, Suite 1090
Arlington, VA 22201**

January 1994

A

Table of Contents

Executive Summary	I
Public Defender Operations	I
Findings and Recommendations	IV
 SECTION 1: INTRODUCTION	 1
A. Background	1
B. Assessment Study	1
C. Assessment Methodology	2
 SECTION 2: PUBLIC DEFENDER OPERATIONS	 3
A. Organizational Structure	3
B. Case Assignment	6
C. Case Management	8
D. Staff and Office	10
E. Personnel Management	12
F. Professional Development and Training	17
G. Professional Conduct	18
H. Conflicts of Interest	18
I. Inter-Institutional Coordination	19
 ANNEX 1: <u>LIST OF DOCUMENTS REVIEWED</u>	 22
 ANNEX 2: <u>LIST OF MEETINGS AND INTERVIEWS</u>	 i

Executive Summary

The USAID Mission in El Salvador has been providing financial and technical support to the Government of El Salvador's public defender program for intermittent periods since 1980, corresponding to periods when the Government of El Salvador (GOES) has demonstrated political will to support a public defense program. In 1993, the GOES, for the first time, included the projected annual costs of the Public Defenders' Office in the national budget and passed legislation that authorizes actions to strengthen institutional capacity of the public defense system.

Because of the importance of a strong public defense to an effective legal system, USAID/El Salvador, in light of the above-noted recent demonstrations of commitment by the GOES, is reviewing and evaluating the institutional needs of the public defense office to determine areas for possible support of GOES efforts to improve the public defense. This report identifies organizational and operational impediments to a more effective Public Defenders' Office, highlights critical areas of need, and recommends a menu of preliminary actions for USAID.

Public Defender Operations

The operation of the Public Defenders' Office (*Defensoría Pública*) has been uninterrupted since 1986. Since then the GOES has manifested an increasing commitment to sustain and improve the legal representation of indigent defendants (*imputados*).

The Public Defenders' Office is empowered by law to provide legal representation to: (1) police or court ordered detainees without counsel; and, (2) those who are not detained but who do not have the financial ability to retain counsel. The earliest point of representation is the time of arrest (*i.e.*, police detention).

Organizational Structure

The Public Defenders' Office is responsible for the public defense in El Salvador. It is a department of the *Procuraduría General* (Office of the Procurator or Solicitor General) in the Public Ministry (*Ministerio Público*). The Public Ministry is an autonomous agency that is independent of the executive, legislative, and judicial branches of the GOES. Two other organizations share the Public Ministry with the *Procuraduría General*. They are the Office of the Attorney General (*Fiscalía General*) and the Office of Human Rights (*Procuraduría General de Derechos Humanos*).

The chief of the Public Defenders' Office is titled "the Department Head" (*Jefe de Departamento*). The Department Head answers directly to the Director of Legal Assistance (*Director de Asistencia Legal*), who in turn answers to the Deputy Solicitor General (*Procurador General Adjunto*) and the Solicitor General (*Procurador General*). The Department Head supervises five (5) Coordinators (*Coordinadores*) and ninety-six (96) Public

Defenders (*Defensores*) throughout the nation. Public Defenders are divided into two classes, *Adscritos*, who are assigned to specific courts, and *Especificos*, senior defense attorneys assigned to major cases.

Case Assignment and Management

The Public Defenders' Office (PDO) acquires cases in one of three ways: police referrals, judicial referrals, and walk-in requests for representation based on financial eligibility. The majority of cases handled by the Public Defenders' Office involve indigent detainees in the custody of the police. When the PDO takes on a case, the Coordinator assigns the case to a staff attorney according to a list designed to divide the work equally among them. Each month the Public Defenders submit to the Coordinators a lengthy report detailing all the actions taken in their cases. From these reports the Coordinators provide the Department Head with a more synthesized monthly report. An agency-wide monthly report regarding the activities of all regional offices is also prepared.

Staff and Office Communications

The Assessment Team interviewed Public Defenders in San Salvador and San Vicente. They proved to be very competent and dedicated attorneys and they were willing to work unpaid hours to represent their clients under taxing circumstances. They face difficult judges, logistical problems, and economic difficulty. Both regional offices have enthusiastic attorneys, who like their work, and perform it reasonably well under difficult circumstances.

The majority of the difficulties cited by staff attorneys in interviews centered on poor support practices. There were complaints by the Public Defenders that their Coordinator Supervisors were not around to consult when needed, that they were busy with their private civil practice or with other jobs and activities. Though these allegations were not investigated further, whether they are true or not, the perception affects morale. Another sore point is that some of the *Adscritos* resent the *Especificos*. The former claim that the *Adscritos* do all the work and the *Especificos* intervene only at the time of the jury trial. In addition, the three job classifications -- Coordinators, *Adscritos*, and *Especificos* -- appear to act independently of each other. There is no communication among groups, except when the Coordinators speak with each other.

Personnel Management

There are no manuals of standard operating procedures in the San Salvador office. Decisions are made on an *ad hoc* basis and implemented by consensus of the Coordinators or the orders of the Department Head. The applicants for hire are referred to the Department Head for the hiring process, a loose combination of interview and examination which is not standardized and consists of theoretical and practical questions. Once a Public Defender is hired, he/she is assigned to a region using *ad hoc*, unwritten criteria. The assignment is usually based on the attorney's place of residence and the needs of the offices.

Most Public Defenders consider low salaries the most pressing office problem. They are frustrated that private practitioners make more money for comparable work. In order to supplement their income some Public Defenders engage in civil practice as well. This creates a potential problem if they, as a consequence, neglect their public attorney duties. Also, it could give rise to corruption. Overall, the inadequate salaries are the main source of discontent.

There are no formal procedures for promotion, periodic performance evaluations, and Public Defender discipline. A Public Defender *Adscrito* can aspire to become an *Específico* and subsequently a Coordinator. The Department Head looks at several criteria: efficiency, years of employment, ability, and discipline. To date no one has been dismissed for disciplinary reasons. The only task that the Department Head performs, in connection with periodic performance evaluations, is to visit judges informally and inquire as to Public Defender effectiveness.

Training

Public Defenders have attended many seminars over recent years. Most dealt with issues of substantive law. They found them instructive and useful and would like this trend continued. The Public Defenders would like to see more seminars dealing with the practical aspects of their work. They would welcome seminars that would improve their practical skills. The Public Defenders feel a need to develop presentation activities and further develop their writing proficiency so as to improve their advocacy skills.

Professional Conduct

The conduct of Public Defenders is based on the honor system. There is no ethics code. The Public Defenders appear to have integrity and behave honestly. Generally, they expressed awareness of professional responsibility considerations. However, without an ethics code, there are no minimum standards to be observed by the profession.

Conflicts of Interest

Representation of adverse co-defendants happens often and this practice is inappropriate no matter how well intentioned. The Public Defenders advised that conflicts of interest are not filed because the list of attorneys designated by the court to defend *imputados* free of charge (*abogados de oficio*), which every judge must have, is either frequently not in the judge's possession or obsolete. Consequently, a judge frequently will assign a single Public Defender to represent adverse co-defendants.

Another conflict of interest problem is a matter of institutional policy and organizational structure. As a matter of policy, the Public Defenders' Office will not represent indigent defendants accused of sexual battery because the Solicitor General's Office represents the victims of such offenses. This policy reveals that the subordination of the Public Defenders'

Office to the Solicitor General's Office is causing an entire class of indigent defendants to be denied representation because of conflict of interest considerations and may suggest that responsibility for the public defense should not be assigned to the *Solicitor General*

Inter-Institutional Coordination

There is no formal inter-institutional liaison among the different components of the criminal justice system. Instead, inter-institutional communication is irregular and tends to be reactive to real or perceived crises. The lack of a formal body that can serve as a forum for all components of the system makes difficult the resolution of conflicts between agencies. The conflicts cannot be foreseen and thus are not avoided. Institutional attitudes which show little regard for the rule of law will go unchecked. One of the most significant problems endemic to the judicial system is the problem of unsentenced offenders (*reos sin condena*). These are individuals who have been incarcerated for a lengthy period of time without a final decision in their case. It is readily apparent that a large number of pending public defense cases fit within this category and are attributable to poor inter-institutional coordination and planning.

Findings and Recommendations

An effective public defense program must develop in El Salvador to serve as a counterpoise to the actions of the police and prosecution in criminal investigations and in courtrooms as well as to encourage judicial accountability in the administration of criminal justice. A state of procedural *carte-blanche* for the police and prosecution undermines public confidence in the fairness of the courts. Law enforcement institutions, especially the police, heavily influence the public's perception of the competence and fairness of government because of the high number of contacts that arise between them. Success in efforts to strengthen the public defense in El Salvador directly advances the LAC Bureau's goal to strengthen the administration of justice and to help raise public confidence in democratic governments in Latin America.

The Public Defenders' Office (PDO) in El Salvador is in the early stages of development as an organization. Management and operations procedures are rudimentary in some cases and not yet established in others.

The most important institutional needs to enable the PDO to become more effective include standard operating procedures, an in-house training capacity for case management and advocacy, management training for Coordinators and administrators, and training for support staff. In addition, the sustainable development of the PDO into an efficient, effective institution will require a higher level of funding for salaries and operating expenses, including office maintenance and logistical support services, such as professional staff transportation, materials, and competent support staff.

Ultimately, the actions recommended in this report for USAID project assistance will not achieve their intended result if the budget for personnel is not increased. Investments in

training will be diluted by the loss of lawyers to the private sector. The present level of funding is affecting staff morale and is interpreted by the attorneys as a clear sign that the GOES is not yet fully committed to a viable public defense. For this reason an overarching assumption for all the recommendations in this report is that the GOES will increase funding to the PDO to provide competitive salaries and cover all operational expenses. The following is a summary of the highest priority recommendations for USAID project assistance. All of these plus actions of lesser priority are discussed more fully in the main body of this report below.

- Case Assignment: The present system wastes time and must be streamlined. Recommendations include establishing uniform financial eligibility guidelines and using case synopses at the intake level, placing more reliance on computerization and the attorney's exercise of independent judgement, and assigning Public Defenders, not secretaries, to receive the incoming calls for services.
- Case Management: The monthly reports submitted by the Public Defenders are too detailed and burdensome to complete. Public Defenders should submit the same monthly reports as the Coordinators. The Coordinator could more efficiently monitor Public Defender performance by looking at the Public Defender case audit in the computer. The Coordinator could then meet with the attorney, review the file, spot problems, and make suggestions. This exercise would promote communication between coordinators and Public Defenders and eliminate waste of time. A manual case tracking system, at minimum, must be implemented.
- Logistical Support (Transportation, Supplies, Infrastructure Maintenance): The operational capacity and morale of public defenders are severely impacted by a lack of adequate support services. Defenders do not have reliable and sufficient access to transportation for official purposes such as jail visits and police referrals for indigent defense. Less than half of the eleven automobiles donated by USAID to the public defenders office are available on a reliable basis for public defense use. Basic supplies, such as pens and paper, are not regularly provided to the public defender offices. Office maintenance and clean up also is not provided. The staff lawyers must share clean up and maintenance responsibility. Equipment and supplies donated by USAID needs to be tracked to ensure it is being used for its intended purpose. Government budget appropriations must include line items for adequate provision of supplies and office/equipment maintenance.
- Personnel Procedural and Field Manual: The absence of a standard operating procedures manual for the office and in the field deprives the staff of the ability to take coordinated courses of action on defense work and office administrations. The lack of communication, definition of duties and obligations, and of knowledge regarding the same are the result of the absence of clear and fair guidelines. A procedural manual should be developed for the Public Defenders' Office containing, at

minimum, standardized operating guidelines for client interviews and defense theories, and procedures for office administration, including case tracking and report writing.

- Training: There is a need to shift the training focus to more practical concerns such as oral advocacy, writing skills, and time and case management. Closing argument and written advocacy could be the topics for seminar/workshops. Substantive law seminars, especially those dealing with changes in the law, should continue.
- Conflicts of Interest: The report identifies two areas of conflict of interest for Public Defenders. First, representation of adverse co-defendants by Public Defenders may occur because of inadequate lists of *abogados de oficio* (judge's list of attorneys assigned to defend *imputados*). These conflicts can be resolved by updating and maintaining *abogados de oficio* lists in each courtroom so that adverse co-defendants will have separate counsel. Second, indigent defendants accused of sexual battery are not represented by Public Defenders because of their subordination to the Solicitor General's Office, which represents victims of sexual battery. Either the independence of public defenders must be ensured in sexual battery cases or the Public Defenders' Office should not be subordinate to the Solicitor General's Office.
- Professional Conduct: A general ethics code needs to be written. Attorneys need to have clear standards of conduct regarding their quality of representation, honesty with the client, and remuneration. The writing of such a code for the Public Defenders' Office would be desirable and could serve as a model for the remainder of the profession.
- Inter-Institutional Coordination: A committee needs to be formed in order to address common problems and areas of conflict. Ideally it should contain the heads of ministries and offices or their deputies. The committee should have as its members the Ministry of Justice, the *Procuraduría General*, the Courts, and the *Organos Auxiliares*.

SECTION 1: INTRODUCTION

The legal system in El Salvador has undergone substantial reforms over the past decade. One significant development has been the provision of legal assistance to persons with scarce economic resources.

A. Background

The USAID Mission in El Salvador has provided grant support to the public defender program for training, operational costs and technical assistance. The Government of El Salvador institutionalized the Public Defenders' Office and included its costs within the national budget for 1993.

The public defense function is managed in the Public Ministry under the Office of the Solicitor General. The Public Ministry is an autonomous agency that is independent of the executive, legislative, and judicial branches of the El Salvador government. The Office of the Solicitor General is one of three organizations under the Public Ministry. The two other organizations are the Office of the Attorney General (*Fiscalía General*) and the Office of Human Rights (*Procuraduría General de Derechos Humanos*).

B. Assessment Study

USAID/El Salvador required an assessment of the operational capability and effectiveness of the Public Defenders' Office in discharging its legally-mandated functions. This report makes recommendations based on findings in the assessment for improving the efficiency and effectiveness of the Public Defenders' Office. Among the areas and issues addressed by the assessment were the following:

- Operational division of work and identify problem areas (e.g. staffing, workload distribution);
- Effectiveness of Regional Offices and recommend organizational modifications;
- Systems for case assignment, computerized tracking and operations monitoring;
- Areas for administrative and logistical support for accomplishment of Public Defender's duties, including training;
- Standards of professional conduct;
- Personnel management systems, including hiring, supervision, evaluation, and compensation to reduce turnover and optimize employee performance;
- Coordination mechanisms between the Public Defenders' Office, the Court, the

Prosecution, and the Police.

C. Assessment Methodology

The assessment of the Public Defenders' Office was conducted by a two person team (the "Assessment Team") through the U.S. Agency for International Development's Regional Administration of Justice Project for Latin America and the Caribbean under contract to the National Center for State Courts. The team members were Mr. Alejandro Gamboa and Ms. Bernice Hernandez. The materials review, interviews, and draft report preparation were accomplished during an 11 day period between June 28 and July 9, 1993. The Assessment Team reviewed various action plans and progress reports regarding judicial reform in El Salvador. See Annex 1 for a list of documents. In addition to interviews with Public Defenders' Office personnel, interviews were conducted with public defender clients, and members of the private bar. See Annex 2 for a list of persons interviewed.

SECTION 2: PUBLIC DEFENDER OPERATIONS

The Public Defenders' Office (*Defensoría Pública*) has been in continuous operation since 1986. Since then the GOES has exhibited a commitment to maintain and improve the legal representation of indigent defendants (*imputados*). It is with the assumption that this commitment will continue and that further system-wide reform will be implemented that the assessment was undertaken.

The Public Defenders' Office is empowered by law to provide legal representation to *imputados* who are being detained by either the police (*órganos auxiliares*) or the tribunals, and who do not have an attorney of record. It also represents those who are not detained but who do not have the financial ability to retain counsel. The earliest state of representation is at the time of arrest.

The Public Defenders' Office represents indigent defendants nationwide through four regional offices: Central, Paracentral, Oriental, and Occidental. All regional offices are located in departmental capitals. All but the heavily populated Central Region office are managed by a single Coordinator. The Central Region office has three Coordinators. The Public Defenders' Office employs 108 Public Defenders countrywide. Public Defenders travel from the regional offices to the courts in the surrounding municipalities to perform their duties.

The regional offices communicate by way of meetings, monthly statistical reports, correspondence, and telephone. Although there is a study to connect the *Procuraduría General* with all its departments (*Procuradurías Auxiliares*) via modem, no such step is presently being contemplated within the regional offices of the Public Defenders' Office. Presently only the central office has computers.

A. Organizational Structure

1. Status and Problems

The Public Defenders' Office is one of the several departments that comprise the *Procuraduría General*. The Department Head answers directly to the Director of Legal Assistance who in turn answers to the *Procurador General Adjunto*, and the *Procurador General*. The Department Head supervises the Coordinators and the Public Defenders throughout the nation.

The function of the coordinator is to supervise the work of the Public Defenders assigned to that regional office. Each office's Public Defenders appear in the courts located within that region's boundaries. The Central region has three sectors because it is the most heavily populated. Each sector has one coordinator with an assigned number of Public Defenders. The Public Defenders who are assigned to a particular court are called *Adscritos*. Those who handle the major crimes cases are considered more senior or experienced and are called *Específicos*.

The number of Public Defenders per region, their location, and the population centers they serve are as follows:

Central

Location:	San Salvador	
Coordinators:	3	
Public Defenders:	60	
Group 1:	23	Locations Served: San Salvador
Group 2:	15	Locations Served: Mejicanos, Ciudad Delgado, Suyapango, Chalatenango, del Nombre de Maria; Tejutla, San Marcos; Suchtoto, Tonocatepeque; Apopa, Guezaltepeque, and San Juan.
Group 3:	22	Locations Served: San Salvador, Santa Tecla, and La Libertad.

Paracentral

Location:	San Vicente	
Coordinators:	1	
Public Defenders:	11	Locations Served: San Vicente, San Sebastian, Ilobasco, Sensuntepeque, Cojutepeque, Zacatecoluca, San Pedro Masainat.

Oriental

Location:	San Miguel	
Coordinators:	1	
Public Defenders:	15	Locations Served: San Miguel, Ciudad Barrios, Chinameca, Jucuapa, Berlin, Santiago de Maria, Usulután, Jiquilisco, La Unión, Santa Rosa de Lima, San Francisco Gotera.

Occidental

Location:	Santa Ana	
Coordinators:	1	
Public Defenders:	10	Locations Served: Santa Ana, Metapan, Chalchuapa, Atiquizaya, Ahuachapan, Armenia, Sonsonate, Izasco, Acajutla.

The Assessment Team was advised by the Coordinators in the Central Region that in 1994 many new justices of the peace (*jueces de paz*) positions will be created in each municipality throughout the country. It is anticipated by the Coordinators that the demand for the services of the Public Defenders will rise. How this demand will be met and whether the current structure can accommodate the changes are issues to be resolved in order to provide services effectively and efficiently. It must be realized by the government that changes in one sector of the judicial system must be accompanied with corresponding changes in the other affected

sectors.

2. Recommendations

In order to offer services in 1994 at the proposed newly created courts, the Public Defenders' Office must increase its number of staff attorneys and support staff. Which of the options or combination of options stated below will be appropriate may depend on their respective costs and available funding. The bottom line is that expansion will be necessary in order to fulfill the program objective of providing *imputados* with due process.

Presently, the PDO's organizational structure does not diminish its effectiveness. At present levels of staffing, the major impediments to improve effectiveness are inter-office communication, supervision, and the division of labor among PDO lawyers. Assuming the PDO does expand to meet growing demand for defense services stemming from the planned increase in justices of the peace and creation of new courts in 1994, the issue of organizational structure should be revisited.

The ultimate recommendations for any change of the organizational structure of the PDO will depend on data not available to the NCSC consultants, such as the increase in caseload that will result from the increase in judges. Nevertheless, one structural change that would facilitate coordination in each regional office and, therefore, improve efficiency would be to create a new subcoordinator-litigator tier in each municipality receiving additional justices of the peace. Under this proposal, the regional coordinator would delegate daily supervision of trial attorneys to subcoordinators in high volume municipal jurisdictions. The subcoordinators, who would have a dual supervisory-senior attorney role, would be available to travel to individual municipalities with junior trial attorneys to guide the case. The subcoordinators could be promoted from among the ranks of the *especificos*, who presently have experience traveling to individual municipalities for major cases.

Summary Recommendations to meet increased demand for defense services:

- i. Hire more Public Defenders and assign at least one to the *Juzgado de Paz* in each municipality.
- ii. If the above is not financially feasible, assign *Práctica Jurídica* students to undertake more of the duties presently being performed by the defenders in the San Salvador courts; so that the latter may be reassigned to the new jurisdictions.
- iii. Create a new subcoordinator-litigator tier to replace the regional coordinator-defensor relationship in those municipalities where more than one judgeship exists or is created.

B. Case Assignment

1. Status and Problems

There are three ways in which the Public Defenders' Office intervenes in cases: police referrals, judicial referrals, and walk-in requests for representation. The majority of cases handled by the Public Defenders' Office are referrals from the police stations. This is a result of the legislative reform empowering the Public Defenders to represent an individual at the time of arrest and prior to police interrogation. In order to handle the influx of cases on the two available telephone lines in the Central Region office, each of the three groups in San Salvador is assigned a *turno* (shift) of one week on a rotating basis. The Coordinator assigns each call (request for defense assistance) on a sequential, rotating basis to the group of Public Defenders who are on call and records the call on a telephone log sheet, which includes times, destination, name of *imputado*, and other pertinent information.¹

Once a case file is opened, it is sent to the secretary of the Department Head of the PDO in the capital. She records it into an entry book, assigns an office case number, enters it into the computer, and passes it to the Department Head, who reviews it for eligibility (economic inability to retain private counsel). If the Department Head determines the *imputado* is eligible to receive assistance, the case file is returned to the secretary of the appropriate group, who records the case in an entry book and countersigns the file. The group secretary then enters the file information in the group's notebook (each group has its own) and forwards the file back to the Coordinator for reassignment and action.

The Coordinator reviews the file and notes it on the reverse and requests a status report (*informe*). It is then assigned to the Public Defender in the particular court. When that court has only one Public Defender, the case is assigned to that person. When there are more than one Public Defender, the Coordinator alternates case assignments. If there are co-defendants, the office represents all. The Coordinator keeps track of the case assignments by the use of a notebook which is numbered and divided among the defending attorneys. The Coordinator determines who first received a case and then assigns the new case to the next in line. The

¹ The phones are manned by the Public Defenders and the group's secretary, from 8:00 A.M. to 6:00 P.M., seven days a week. There are not enough attorneys available for nighttime duty. Consequently, the Coordinator has advised the police that any resulting statements from nighttime questioning, without the presence of a Public Defender, will be considered coerced. Since coercion may cause a nullity, the Assessment Team was told that the police are complying and that they wait until morning before trying to initiate the questioning. During the week that a group is on call, the Public Defenders of that group do not appear in court. An exception results when a Judge requests their presence at the time the police turn the *imputado* over, within 72 hours of arrest, for the judicial investigation to begin.

Public Defender, upon receipt of the file, initials it as received. Then a status report is prepared regarding the status of the proceedings.

Another category of problem related to case assignment is an apparent over-assignment of cases to *adscritos* in relation to the *especificos*. Based on interviews with a number of public defenders, the consultants conclude that the *especificos*, who are assigned a more serious class of criminal cases, do not have an equal caseload with *adscritos*. Moreover, for the cases that *especificos* do handle, *adscritos* allege that they are required to do administrative and non-trial legal work. This inequality in the division of labor between the *adscritos* and *especificos* should be confirmed based on statistics of pending caseload and the relative complexity and time requirements of the cases assigned to each. If the condition is confirmed by data, the criteria for determining which cases should be handled by *especificos* should be broadened.

2. Recommendations

The present system wastes time and must be streamlined. The file is moved unnecessarily in several directions for the performance of simple tasks. Several days may pass before a file is finally delivered to an attorney for action.

This precludes the early intervention of the Public Defender in the case. There is no need for the Department Head to review the file for the sole purpose of determining eligibility. It is also unnecessary for his secretary to maintain a book with a record of cases forwarded to group secretaries. The report requested by the Coordinator upon assignment is wasted effort. It delays the action to be taken during the time that the Coordinator reviews it and returns it to the attorney. As its caseload increases, the Office of the Public Defender needs to eliminate formalistic, manual record keeping practices.

The *Procuraduría* should devise eligibility guidelines which take into consideration the *imputado's* income, marital status, dependents, and living expenses. Once these are established the Public Defender can obtain the information and pass it on to the Coordinator for approval. This avoids the extra step of having the Department Head make the decision. The Public Defender can also do a synopsis of case status at the first contact with the *imputado* and before the case is assigned by the Coordinator. This saves the extra steps of giving a report to the Coordinator after assignment, and then receiving the file again to work up. Another change that would provide more secretarial time would be for the attorneys on *turno* to handle incoming calls. The attorneys would prefer this. Situations develop which require legal knowledge in order to act appropriately. Lacking that, the secretaries make assignment mistakes which affect services to the *imputados*, *i.e.* sending Public Defenders to police stations instead of the *juzgado*.

Summary Recommendations

- i. Devise a streamlined procedure by using eligibility guidelines and case synopses at the intake level, and by placing more reliance on computerization and the attorney's

exercise of independent judgement. Accordingly, the flow would be as follows:

Attorney receives assignment, interviews client regarding case and eligibility, and prepares case file report. The file is passed to the Department Head's secretary who enters case in computer and provides a file number. Secretary passes the file to the group secretary, who completes computer entry and forwards to coordinator for assignment. (With the appropriate software, the secretary could perform the assignment and this would save another step bypassing the Coordinator.) The Coordinator assigns the case to the appropriate attorney who then continues the representation of the client. Ideally, all these actions would be entered in the computer and eliminate the use of books.

- ii. Have attorneys receive the *turno* calls and arrange transportation and assignment. Limit secretaries to clerical and administrative duties.
- iii. Improve the division of labor between *adscritos* and *especificos* by expanding the class of cases assigned to *especificos* to include some of the cases presently assigned to *adscritos*.

C. Case Management

1. Status and Problems

In all of the regional offices, the Coordinator keeps track of her/his group's cases by requiring monthly reports from each defending attorney. Each report lists all the actions taken in cases for the month by the individual attorney of record. From these reports the Coordinators provide the Department Head with a more synthesized monthly report. An agency-wide monthly report regarding the activities of all regional offices is also prepared.

The Assessment Team attempted to obtain the monthly reports for March through June, 1993. The purpose was to establish some quantitative measure of the office's effectiveness, after its funding was taken over by the Salvadoran Government. These figures would have been compared to the ones before that event to see if the office was maintaining its level of effectiveness. However, the requests were met by evasive comments by the Department Head such as "I need to clear that with my superiors," "I do not know if you are allowed to see them," and "A.I.D. has them." The latter statement was not true. Time reports for that time-period were never provided. References to statistical monthly reports in this paper pertain only to the reports provided to AID before March, 1993.

The reports reviewed by the Assessment Team were lengthy, excessively detailed, and cumbersome to handle. In all regional offices other than in San Vicente, where the caseload is approximately forty-five cases per month lower than the average monthly caseload per region, the public defenders have computers available to them to prepare the reports.

The capacity of the PDO also is stretched by the absence of systematic, standardized guidelines for closing cases that are inactive. To the extent inactive cases are categorized officially to be pending, they divert attention from newer cases and complicate effective case management.

Logistical Support

Anecdotal information indicates that effective case management by the defenders is impeded by inadequate support services. Unskilled and apparently unmotivated secretaries impede the completion of reports according to lawyers interviewed by the Assessment Team. Inaccessibility to single copies of case files in the possession of the secretaries is an oft-cited example of support staff inefficiency. The Public Defenders also complained about the secretaries' practice of answering the phone during the "turno" weeks as a tactic to keep from preparing pleadings and doing other important clerical work. In a number of instances attorneys reported that the secretaries offered misinformation in response to phoned-in questions requiring knowledge of substantive law and procedure. In other cases, secretaries relayed incorrect information to the attorneys that resulted in some Public Defenders going to the wrong place or detainees not being represented.

A lack of sufficient office equipment, including communications (Telephones/faxes) and word processing (computers) equipment, also frustrates improved effectiveness. The existing computer system is inadequate. There is an insufficient number of terminals available and no protection against frequent power outages. Statistical reports are written by hand because of the absence of appropriate software to automate the procedure. Although judges may access court files by computer, the courts automated filing system is not accessible to the public defenders. A computer system manager for the *Procuraduría General* (Ingeniero José Roberto Olivares Choto) is determining the feasibility of accessing the court database by modem into the *Procuraduría General*. The study does not yet contemplate access for the regional offices of the PDO.

2. Recommendations

The monthly reports submitted by the Public Defenders are too detailed and very burdensome to complete. Occasionally the Public Defenders cannot provide all the information requested because the file is not available. This process is inefficient and time consuming since every possible action in a case must be documented.

Each Public Defender submits a monthly report detailing actions taken. This is a four-page, statistical report that is onerous to prepare. These reports become the basis for the simple monthly report that all Coordinators submit. The Department Head then prepares and submits to his superiors an agency-wide report. These show the number of cases that were opened. They emphasize the clients freed and the methods utilized for that purpose.

Public Defenders should submit the same monthly reports as the Coordinators. The multitude

of legal actions that can be taken in a case can be noted on the outside of the file. They could also be entered into the computer and retrieved later for statistical purposes by the secretary.

The Coordinator could more efficiently monitor performance by looking at the Public Defender case audit in the computer. This capability already exists. By picking cases at random, the Coordinator could meet with the attorney, review the file, spot problems, and make suggestions. This exercise would promote communication between management and defending attorneys as well as eliminate waste of time in submitting monthly reports.

If any expense is involved in this approach, it would only be in the cost of software. This would be cost-effective over time.

Summary Recommendations

- i. Monthly Reports: Have Public Defenders submit more condensed reports such as the ones used by the Coordinators. Rely on case audit to monitor Public Defender work on cases.
- ii. Simplify the Public Defender monthly reports by having them submit information in the same format as the Coordinators. (This could be programmed into the computer.)
- iii. Document the actions in the file and have the group secretary enter it into the client's computer file.
- iv. Develop standardized criteria for closing out cases
- v. Improve the information management and communications resources in the regional offices by increasing the number of telephone lines, faxes, and computer terminals. The PDO information system should be able to access the courts' case file information. Appropriate software should be installed on PDO computers to streamline the process of producing standardized case reports.

D. Staff and Office Supervision

1. Status and Problems

Interviews were conducted with many Public Defenders. Some of the individuals interviewed were assigned by the coordinators, others approached us independently, and others were approached informally by the Assessment Team. They were asked questions regarding achievements; shortcomings; problems; material and educational needs; administrative concerns; and job satisfaction. They were also questioned regarding their handling of special cases; this included a review of the file.

The Public Defenders in San Salvador and San Vicente proved to be very competent and dedicated attorneys. They were willing to work unpaid hours to represent their clients under taxing circumstances. This was especially true in San Vicente. There, the defending attorneys are hired to work part time for less money; but they stay longer in the office and in the courthouses performing their duties. They face difficult judges, logistical problems, and economic difficulty. Both regional offices have enthusiastic attorneys, who like their work, and perform it well.

The San Vicente office, probably because of its small size, proved to be the more cohesive of the two offices. Its Coordinator has a hands-on management style. He reviews all the files initially, and assists his attorneys in preparing their cases. A review of some files revealed suggestions that he had made to the defending attorneys regarding courses of action as well as requesting status reports. He holds regular staff meetings where administrative and case concerns are vented. This approach explains the high degree of morale and communication in said office.

By contrast, the situation in the San Salvador office is not as positive. The lawyers provided mixed reviews regarding management. Although some were complimentary, most were not. They feel that the Coordinators are too removed from the concerns of the rank and file and that the line attorneys are not consulted regarding matters that affect their performance. They resent not being treated like professionals, e.g., they are required to punch a time card as if they were factory workers.

There were also complaints that the Coordinators were not around to consult when needed, that they were busy with their private civil practice or with other jobs and activities. Though this was not pursued, whether true or not, this perception affects morale. Another sore point is that some of the *Adscritos* resent the *Específicos*. The former claim that the *Adscritos* do all the work and the *Específicos* intervene only at the time of the jury trial. Both perceptions -- the unavailability of the Coordinators and the lack of productivity by the *Específicos* -- cause the *Adscritos* to seek support only from trusted colleagues. This is detrimental because of the distrust that it develops and the loss of resources that the leadership and experience of the Coordinators and the *Específicos* could provide.

In addition, the three groups appear to act independently of each other. There is no communication among groups, except when the Coordinators speak with each other. Only one group appears to communicate well within itself by discussing cases, sharing concerns and rendering assistance.

2. Recommendations

Staff meetings should be held once a month, both by group and, at greater intervals, among all groups in the San Salvador office. An agenda which includes administrative problems, complaints, and case preparation concerns would be a starting point. It could be a forum where the attorneys' opinions and feelings are solicited regarding policy and procedure. This

would encourage communication, increase effectiveness, and improve morale.

Another step that must be taken is to require more from the *Especificos*. They should engage in case preparation from the time it is assigned to them. They are the more idle group of Public Defenders in the San Salvador office. They are perceived by the *Adscritos* as inconsiderate for dumping the work on them. The *Especificos* are in a position to become a resource for less experienced Public Defenders. They should assume leadership by example.

Summary Recommendations:

- i. Conduct regular staff meetings within and among the groups in order to improve communications, increase Coordinator availability, and assist Public Defenders in case preparation.
- ii. Require *Especificos* to work their cases from the time of intake until their conclusion.

E. Personnel Management

1. Status and Problems

There are no manuals of standard operating procedures in the San Salvador office. Decisions are made on an *ad hoc* basis and implemented by consensus of the Coordinators or the orders of the Department Head. The procedures are not memorialized in any document. According to the Department Head, Lic. Bustamante, he is working on a procedure manual on his own time. He hopes to have it ready in September of this year.

2. Recommendations

The absence of a standard operating procedures manual deprives the staff of the ability to take cohesive courses of action regarding circumstances that affect office operations. Without a sense of direction and purpose for each of its components, the office is unable to coordinate its functions effectively and efficiently. The lack of communication, definition of duties and obligations, and of knowledge regarding the same are the result of the absence of clear and fair guidelines.

A procedural manual should be developed for the Public Defenders' Office. It should contain, at a minimum: hiring procedures, job qualifications and descriptions, promotion guidelines, and discipline/grievance procedures. Contributions and opinions should be sought from all office members. It should be updated in writing. The manual must be available at all times to employees of the Public Defenders' Office.

Summary Recommendation:

- i. Prepare a department operating procedures manual, which defines and interrelates the functions of the office, as well as the duties and obligations of its members. The starting point for producing the manual should be an employee questionnaire designed to document current operating procedures and stimulate recommendations from staff for standardizing procedure.

Hiring and Assignment

Applications for attorney positions are made through the Director of Legal Assistance. The applicant is then referred to the Department Head for the hiring process, a loose combination of interview and examination which is not standardized and consists of theoretical and practical questions. There are no eligibility guidelines that the Department Head must follow to carry out recruitment and hiring. The interview/examination is given to all applicants regardless of experience. If the person is known in any way, the interview may become a cursory one ("This is a small country, we know who is who"). Occasionally, the Department Head solicits the opinion of the Coordinators. If an applicant is deemed satisfactory, his/her name is submitted to the Director of Legal Assistance, who makes the final decision.

Once a Public Defender is hired, he/she is assigned to a region using *ad hoc*, unwritten criteria. The assignment is usually based on the defending attorney's place of residence and the needs of the office. Occasionally, assignments and transfers are made if the Public Defender and a Judge develop an acrimonious relationship.

Hiring and Assignment Recommendations

The process is not standardized and thus lends itself to subjective and political influences. If an unqualified applicant is hired, his/her subpar performance will harm the office goal of providing competent representation. It also damages morale. The lack of input by Coordinators or staff members regarding their knowledge of an applicant also contributes to uninformed, mistaken decisions.

The hiring method needs to be standardized to exclude the influence of politics and cronyism. It should aspire to select the best qualified candidates. There should be written tests of substantive and procedural law. These should be accompanied by interviews in which management and line defending attorneys participate. Information about the applicant should be sought from the office at large. A memo stating the applicant's name and date and time of interview can be circulated. Care should be taken that someone is not damaged by gossip or innuendo. Opinions should be submitted in writing. If the matter is too sensitive, some serious questioning of the person who submits it should be done to ascertain its accuracy and intent.

Summary Recommendations:

- i. Develop standardized formats for interviews and examinations.
- ii. Request information regarding the applicant from coordinators and staff members who may know him/her.

Compensation

Public Defender salaries have two levels. Full-time *Adscritos* and *Específicos* earn 2300 colones and 2900 colones per month respectively. Part-time Public Defenders earn one-half those amounts depending on their position.

Not all Public Defenders have completed their law school programs (*licenciado*). In San Miguel (Eastern Region) an estimated 20% have received their law degree. The justices of the peace, most of whom have not attended law school, received salary increases in recent years and earn 50% more than the Public Defenders. Prosecuting attorneys (*fiscales*), on the other hand, earn 25% less than the Public Defenders.

Most Public Defenders consider low salaries the most pressing office problem. They are frustrated that private practitioners make more money for comparable work. In order to supplement their income some Public Defenders engage in civil practice as well. This creates a potential problem if they, as a consequence, neglect their public attorney duties. Also, it could give rise to corruption. There were unverified rumors that some Public Defenders would try to coax money from their clients in order to expedite their cases. Overall, the inadequate salaries are the main source of discontent.

The problem is worse in the regional offices where all the Public Defenders supposedly work part-time, yet have full-time schedules. The *Específicos* in the San Vicente office have to pay for their own gas, lodging, and meals when they have to stay overnight in some jurisdictions. There is no provision for reimbursement. A great deal of effort and quality work is not being adequately remunerated.

The low salaries also create a talent flight. Public Defenders leave for private practice, seeking higher income. The effort and expense that has been spent on training is being somewhat wasted. Instead of helping to create a Public Defenders' Office with depth of competence and experience, the imparted knowledge is leaving the office.

The Assessment Team was told that a new law, which came into effect in July, prohibits public employees from earning income in the private sector. Without a corresponding increase in salaries, the law will create an extreme hardship on the public defenders, who supplement their income with small civil practices. Effective enforcement of the law makes it imperative that salaries be raised to an adequate level. Assuming the public defenders receive

an adequate salary increase, the coordinator (and subcoordinators, if created) should be required to maintain full time office hours to carry out the training and evaluation role described below in the section on "Promotions, Performance Evaluations and Disciplinary Actions."

Compensation Recommendations

The single most important requirement for improving public defense is salary and operational expense increases. This has been identified in previous USAID/ES reports, dating as far back as 1983.

This chronic underfunding must stop if the GOES expects the Office of Public Defenders to attract highly qualified individuals, as well as prevent talent flight and squandering of training resources. The government must be persuaded to correct this situation.

Summary Recommendation:

- i. Increase salaries and operational expense levels of all PDO staff attorneys according to a merit-based career track with corresponding pay scales.
- ii. Require coordinators to maintain full time office hours and expand their duties to include training and professional evaluation.

Promotions, Performance Evaluations, and Disciplinary Actions

A Public Defender *Adscrito* can aspire to become an *Específico* and subsequently a Coordinator. The Department Head looks at several criteria: efficiency, years of employment, ability, and discipline. He speaks with the Coordinators to see who would best fit the position. Then he applies the above criteria. Inspection of case files and the Coordinator's comments are the main source of information for the decision. Once a name is chosen, it is submitted to the Director of Legal Assistance for approval.

Performance and discipline are rated on an informal and isolated basis. For example, if poor performance, tardiness, or lack of diligence are noticed, then an individual is observed for a suitable time. If the Department Head and the Coordinator decide there is a problem, the former writes a report to the Personnel Director. Then the Department Head meets with the Public Defender and discusses the problem. He counsels him/her and seeks a solution, *e.g.*, transfer to another judge if there is a personality conflict. To date no one has been dismissed for disciplinary reasons. The only task that the Department Head performs, in connection with periodic performance evaluations, is to visit judges informally and inquire as to Public Defender effectiveness. There are no formal procedures for promotion, periodic performance evaluations, and Public Defender discipline. Whatever measures are taken, they are informal and totally subjective. There are no written mechanisms to provide objectivity and formal

notice. The attorneys do not have a grievance procedure to contest an unfavorable decision or complain about their superiors. There is no perspective by top management as to how Public Defenders rate the supervisory skills of the Coordinators. The Public Defenders perceive that political ties, friendship, and favoritism are the main criteria for advancement or transfer. Anecdotes were related where these factors foiled the proposed dismissal of a Public Defender for neglecting his cases, and where political connections, and not merit and experience, facilitated another's advancement to a supervisory position.

Recommendations regarding Promotions, Performance Evaluation and Disciplinary Action

Personnel should be promoted according to an open standardized process. It should be comprised of examinations which cover the applicant's knowledge of substantive and procedural law. An appraisal of performance must also be considered. Both of these components should be in writing. The applicant must be provided an opportunity to contest an unfavorable review. Candidates for a vacant supervisory position should be permitted to compete by submitting their name to a job vacancy list, which is accessible to all potential applicants. Promotions should be awarded from that list.

Every defending attorney's performance (and all other staff members') should be evaluated yearly in writing. Criteria for evaluating performance must be developed by consensus of a management committee (i.e., absenteeism, reliability, competence, quality of work). Each Public Defender should meet with the personnel evaluator to discuss the results. A procedure for challenging negative evaluations should be devised and should be in writing with a notice provision.

A similar evaluation of the five Coordinators should be carried out by the Department Head. A questionnaire could be given to the Public Defenders to provide information regarding the Coordinator's availability, helpfulness, and demeanor. All should be in writing and confidential. The same safeguards as stated above should also be established.

A disciplinary process should also be instituted. It should have written notice of nature and details of complaints. The Public Defender must be given an opportunity to be heard. Sanctions should be proportionate to the gravity of the offense. One suggestion for bringing disciplinary action is if undesirable behavior is observed a verbal warning is given together with a counseling session. Only the fact that a warning was given would be noted in the person's file, not the nature of the conduct. If it happens again then a written notice would be to the person and copy to the file. If a second written notice is given then a hearing could be scheduled.

Summary Recommendations:

1. Award promotions based on written examinations and performance evaluations in order to avoid politicization of the process and the appearance of impropriety.

2. Provide for annual, written evaluations based on objective criteria, and establish a mechanism for the Public Defenders to challenge unfavorable reviews.
3. Establish evaluations of Coordinators by the Department Head with input from defenders.
4. Establish a formal discipline and grievance process with objective standards.

F. Professional Development and Training

1. Status and Problems

Public Defenders have attended many seminars over the past year. Most dealt with issues of substantive law. They found them instructive and useful and would like this trend continued. The Public Defenders would like to see more seminars dealing with the practical aspects of their work. They would welcome seminars that would improve their practical skills. Some feel insecure when they have to appear before a jury. The Public Defenders also feel a need to further develop their writing proficiency so as to improve their advocacy skills.

2. Recommendations

There is a need to shift the focus to more practical concerns such as oratorical and writing skills. Closing argument and written advocacy could be the topics for seminar/workshops. Substantive law seminars, especially those dealing with changes in the law, should continue.

Summary Recommendation:

- i. Provide seminars and work shops that teach how to prepare and deliver effective closing arguments as well as improving the ability to advocate in writing.
- ii. Develop a workshop to provide continuing clinical training on interview and examination techniques.
- iii. Offer a series of seminar/workshops to defenders on case management.
- iv. Train the coordinators to provide professional training and evaluation of public defenders.

G. Professional Conduct

1. Status and Problems

The conduct of defending attorneys is based on the honor system since there is no ethics

code. The Public Defenders appear to have integrity and behave honestly. They were very aware of ethical considerations. The effects of the absence of a professional code of ethics may be more serious in the private sector. Statements by Public Defenders and defendants revealed stories of exploitation and negligent representation. According to a respondent, private counsel would intervene in cases, after the Public Defenders did all the work, and claim responsibility for a favorable outcome. Without an ethics code there are no minimum standards to be observed by the profession.

2. Recommendations

A general ethics code must be written to establish standards for professional conduct. Although, a previous report highlighted the need for a code of professional conduct one does not exist. Attorneys need to have clear standards of conduct regarding their quality of representation, honesty with the client, and remuneration. The writing of such a code for the Public Defenders' Office would be desirable and could serve as a model for the remainder of the profession.

Summary Recommendation:

- i. Draft a code of ethics for the Public Defenders' Office setting forth minimum standards of conduct.

H. Conflicts of Interest

1. Status and Problems

Representation of adverse co-defendants happens often. The Public Defenders were observed doing a good job in trying to represent each defendant's interest well. However, this practice is inappropriate no matter how well intentioned. The Public Defenders advised that conflicts of interest are not filed because the list of attorneys designated by the court to defend *imputados* free of charge (*abogados de oficio*), which every judge must have, is either frequently not in the judge's possession or obsolete.

Another conflict, institutional in nature, occurs when indigent defendants accused of sexual battery are not represented by the Public Defenders' Office. Nowhere in the organizational law (*Ley Orgánica*) is the Public Defenders' Office exempted from representing such defendants. But the office takes the position that since the *Procuraduría General* represents the victims of such offenses, *i.e.*, the family, that it would be a conflict of interest to intervene in sexual battery cases. This perception appears to be mistaken.

2. Recommendations

Two areas of conflict of interest for Public Defenders were identified. Representations of

adverse co-defendants by Public Defenders may occur because of inadequate lists of *abogados de oficio*. Indigent defendants accused of sexual battery are not represented by Public Defenders by order of policy promulgated by the leadership of the Public Defenders' Office. The express basis for the policy is potential intra-organizational conflict within the Solicitor General's Office. The Solicitor General's Office represents the victims of sexual battery.

Summary Recommendations:

1. The *abogados de oficio* lists in each courtroom should be updated so that adverse co-defendants will have separate counsel. The *Procuraduría General* should enlist the assistance of the Supreme Court in order to accomplish this goal.
2. The representation of sexual battery defendants should be undertaken by Public Defenders. It is incongruous that a body charged with the function of representing all defendants should opt out because of a perceived conflict. Perhaps the Public Defenders' Office should be an autonomous office or be placed under some other governmental body in order to avoid perceived institutional conflicts of interest which create service vacuums.

I. Inter-Institutional Coordination

1. Status and Problems

There is no formal inter-institutional liaison among the different components of the criminal justice system. Whatever communications occur result from the emergence of specific problems. For example, the decision of the police not to question detainees after 6:00 P.M., due to the unavailability of Public Defenders, was the result of a direct contact initiated by the Public Defenders' Office with the police. All these contacts are informal.

The lack of a formal body that can serve as a forum for all components of the system makes difficult the resolution of conflicts between agencies. The conflicts cannot be foreseen and thus are not avoided. Institutional attitudes which show little regard for the rule of law will go unchecked. A case in point are the actions of the Special Antinarcotics Unit (*Unidad Especial Anti-Narcotráfico*) (UEA). According to the Public Defenders, UEA fails to respect the constitutional rights of the accused by depriving them of the assistance of counsel. The Public Defenders sometimes are not allowed to speak with their clients, nor are they allowed to read the statements of the accusing witnesses. This does not allow the Public Defender to adequately advise the client of the charges and the evidence. This also precludes, at least initially, the formulation of a defense by the accused. Informal meetings alone will not solve this problem. The Public Defenders acting individually, on a case-by-case basis, cannot do it either.

One of the most significant problems endemic to the judicial system -- and in need of inter-institutional coordination -- is the problem of individuals who have been incarcerated for a

lengthy period of time without a final decision in their case (*reos sin condena*). Our interviews with the directors of prisons and with the director of the prison system revealed that 88% of prison inmates are awaiting final sentencing. A large number of pending public defender cases involve *reos sin condena* (RSC).

A study of the statistics submitted by the Public Defenders' Office to USAID/ES from March, 1992 to February, 1993, showed that the Public Defenders were able to free from incarceration roughly 50% of their clients. The other 50% are divided between those who have been sentenced and those awaiting the conclusion of their cases. But since only 12% of inmates are sentenced prisoners, the remaining 38% of the Public Defenders' cases are probably RSCs. As the caseload becomes larger in view of the increase of *Juzgados de Paz*, this problem will be a major one for the Public Defenders' Office. Its resources and personnel will be taxed by the increase of pending cases.

The causes of the problem are varied and beyond the Public Defenders' control. There is no bond in felonies (*Delitos* - charges punishable by over 3 years in jail). The time periods are not strictly followed as set forth in the Code of Criminal Procedure (*Código Procesal Penal*) (CPP). Some blame the judges, alleging they are lazy or corrupt. The judges blame the attorneys for not discharging their duty. According to Dr. Disraeli Omar Pastor, a prominent private attorney, there is some truth to both assertions. Since no measures are taken by some Judges and/or attorneys, cases continue unresolved and *imputados* languish in overcrowded prisons.

There is a need for reforming the CPP, so that it provides for a bond in felony cases; and/or a speedy trial time period with a dismissal provision; and/or plea bargaining in order to reduce the number of inmates in this category.

2. Recommendations

A planning and advisory committee for legal system policymaking should be formed to address system-wide constraints and areas of conflict. To be vested with sufficient authority to be effective, ideally, it should contain the heads of ministries and offices or their deputies. The committee should have as its members, at minimum, the Ministry of Justice, the *Procuraduría General*, the Courts, and the *órganos auxiliares*.

Summary Recommendations:

- i. Create a policy and planning committee for the justice system no lower than the Department Head level, involving the public defender, the prosecutor, the police, and the courts to resolve inter-institutional issues and problems.
- ii. The Code of Criminal Procedure and/or judicial case management policy should be modified with innovations designed to reduce undue delay and remove inactive cases. Examples of possible reforms include implementation of standards for judicial case

management, authorization of summary guilty pleas, plea bargaining, and greater use of motions practice to dismiss an inactive or flawed case.

ANNEX 1: LIST OF DOCUMENTS REVIEWED

U.S. Agency for International Development, El Salvador, Program Objectives Document FY1993/Action Plan FY1993 and FY1994 (April, 1992).

U.S. Agency for International Development, El Salvador, Project Paper Judicial Reform, Amendment No.1 (1989).

Management Systems International, International Development Center, and ABT Associates, Inc., Support for Judicial Reform in El Salvador: A Stakeholder's Analysis (A Draft) (December, 1992).

Plan de Acción 1992, Proyecto: Reforma Judicial Componente IV, Subcomponente III: Reforzamiento del Ministerio Público Fondos de Contrapartida ESF/91 "Defensa de la Libertad Individual".

Checchi & Company Consulting, Inc., El Salvador, Información para Base de Datos, Procuraduría General de la República (Julio, 1991).

Ley Orgánica del Ministerio Público.

Reformas al Código Procesal Penal.

Código Penal.

El Proceso Penal en Gráficos, Ministerio de Justicia, República de El Salvador, San Salvador, Marzo, 1992.

Lic. Francisco Esteban Artiga Alfaro y Lic. Roberto Arteaga Ayala, Proyecto, Fortalecimiento de la Oficina Práctica Jurídica, San Salvador (Agosto de 1992).

Lic. Esteban Artiga Alfaro y Lic. Roberto Arteaga Ayala, Plan de Trabajo Oficina Práctica Jurídica, San Salvador (Julio de 1993).

Corte Suprema de Justicia, Reglamento sobre Práctica Jurídica (Septiembre de 1991).

ANNEX 2: LIST OF MEETINGS AND INTERVIEWS

1. Interviews with the head of the department of Public Defenders' Office, Lic. José Orlando Hernández Bustamante.
2. Interviews with the three Coordinators (supervising attorneys) for the central region of the department: Lic. Alba Evelyn Cortéz de Alvarenga, Lic. Rolando Corcio Campo, and Lic. Sandra Carolina de Garay regarding office organization, case assignment, paper flow, meetings, monitoring of performance (statistics), resources, and problems.
3. Interview with the comptroller of the department, Lic. Roberto Arteaga Ayala.
4. Interviews with various Public Defenders and observation of same while performing their duty of representing imputados at the arrest and *sumario* stages. Review of their files and actions taken, observation of client interviewing at police station, court, and jail. Also obtained their opinion regarding management; case assignment and management; availability of resources, salary, training needs, obstacles in their work, morale, and job satisfaction.
5. Interview with secretarial staff regarding intake, record keeping, office equipment and supplies, and utilization of the computer system.
6. Interview with computer system manager, Ing. José Roberto Olivares Choto regarding capability of system, programming, record keeping, reports, and usage by Public Defenders.
7. Interview with office librarian, inspection of research materials and support provided to Public Defenders.
8. Interview with Coordinator of Paracentral regional office (San Vicente), Lic. Jorge Alberto Espinoza Martínez.
9. Interview with San Vicente Public Defenders regarding same topics as in paragraph 5 above.
10. Interview with various Judges in the Regional Central and Paracentral regarding their perception of the Public Defender system, the performance of the office and problems in the Judicial System. Observed said Judges and their personnel in the performance of their duties.
11. Inspection of the courts, their facilities, technological resources, and interview with various Judicial Personnel.
12. Interview with the Director of the *Práctica Jurídica* Lic. Esteban Artiga Alfaro, and the coordinator of the same entity, Lic. Jorge Amado Alas regarding the purpose, function,

ANNEX TWO

and organizational scheme of the *Práctica Jurídica* and its impact and relation with the Public Defenders' Office.

13. Interview with a prominent member of the private bar, Dr. Disraeli Omar Pastor regarding the opinion of private attorneys about the need for a Public Defender Office, its impact on the private bar, the competence of the office, as well as system wide problems.
14. Interview with Lic. Nicolás Campos Rafael, Director of Penitenciaría Central La Esperanza in Mariona.
15. Interview with Lic. Irma Isabel Velázquez de Mejía, Director of Centro de Adaptación para mujeres in Ilopango.
16. Interviews with inmates Alicia Hidalgo Avilés, Roberto Rivas Barahona, Arístides del Cir Noena Funes, Oscar Antonio Flores, and Hermenegildo Ventura Arévalo.

s:\aid\wpfiles\ncscaid\elsalvad\reports\rptncsc.ver